

MEMORANDUM OF LAW

DATE: April 12, 1990

TO: Carol Maxwell, Personnel Department

FROM: City Attorney

SUBJECT: Preemployment Testing

Recently you asked for a legal opinion regarding the medical and psychological testing requirements imposed on applicants for Fire Prevention Inspector I. Fire Prevention Inspector I's are designated peace officers pursuant to California Penal Code section 830.31(2). Specifically, you asked whether the examinations must be completed prior to employment, whether casual observation by an examining physician will satisfy the psychological examination requirements and what the penalties are for failure to comply with the statutes.

California Government Code section 1029.1 is very specific as to when the examinations must be performed. It reads:

Section 1029.1. Background investigation  
of peace officer  
applicants

The Department of Corrections and the Department of the Youth Authority shall complete a background investigation, using as guidelines standards defined by the Commission on Peace Officer Standards and Training, of any applicant for employment as a peace officer before the applicant may be employed or begin training as a peace officer. In order to reduce potential duplication of effort by individual institutions, investigations shall be accomplished by each department on a centralized or regional basis to the extent administratively feasible (emphasis added).

This language demonstrates a clear intent by the legislature that the examinations be conducted prior to employment.

California Government Code section 1031(f) mandates that applicants have both physical and psychological examinations. It does not indicate how extensive the psychological examinations must be. However, the California Administrative Code, Title 2 section 172.4 through 172.8 outlines the minimum standards for the psychological examinations. A copy of the applicable code

sections is attached. It is clear that casual observation by the examining physician is insufficient. At least two written examinations must be conducted.

It should be noted that the above regulations are directed specifically at state personnel and are not mandated for local agencies. Nevertheless, the regulations interpret and clarify the statutory scheme. Additionally, the same standards are found in the Peace Officer Standards and Training guide which has been adopted by the San Diego Police Department. Therefore, it is recommended that the state guidelines be adopted for all City peace officers.

No statutory penalty for failure to comply was found.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

SAM:mrh:310(x043.2)

Attachments

ML-90-47